

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI

PATRICK TAGUE,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	(Removed from the Circuit Court of Jackson
THE CHEESECAKE FACTORY	)	County, Missouri, Missouri Case No. 2016-
RESTAURANTS, INC.,	)	CV16324)
	)	
Defendant.	)	

**NOTICE OF REMOVAL**

Pursuant to 28 U.S.C §§ 1441 and 1446, Defendant The Cheesecake Factory Restaurants, Inc. (hereinafter, "The Cheesecake Factory") hereby removes Case No. 2016-CV16324 (the "State Court Action") from the Circuit Court of Jackson County, Missouri, to the United States District Court for the Western District of Missouri on the ground that jurisdiction exists under 28 U.S.C. § 1332(a)(1). In support of removal, The Cheesecake Factory states as follows:

1. On August 6, 2020, Plaintiff filed his Petition against Defendant The Cheesecake Factory.
2. A true and correct copy of all process, pleadings, and orders the State Court Action are attached hereto as Exhibit A.
3. The Cheesecake Factory was served on September 28, 2020.
4. This Court has original jurisdiction over this action under 28 U.S.C. 1332.
5. The amount in controversy exceeds \$75,000 because, while Plaintiff's Petition asserts "damages in excess of Twenty-Five Thousand Dollars," it also alleges the following damages that would likely exceed \$75,000.00 if proven true:
  - a. severe injuries and/or exacerbation of existing injuries to his back;
  - b. past and future physical and mental pain and suffering due to his injuries and the associated recovery process;
  - c. past and present mental anguish associated with his injuries;

- d. past and future diminished quality of life, including but not limited to, an inability to perform daily activities with the same ease and regularity; and/or
- e. past and future expenses for medical, therapeutic and pharmaceutical care and treatment of his personal injuries.

Exhibit A, Plaintiff's Petition, ¶ 25. To satisfy the amount-in-controversy requirement, Defendant must show by a preponderance of the evidence only that "a fact finder *could* legally conclude from the pleadings and proof adduced to the court before trial, that the damages that the plaintiff[s] suffered are greater than \$75,000." *Kopp v. Kopp*, 280 F.3d 883, 885 (8th Cir. 2002) (emphasis added); *see also James Neff Kramper Family Farm P'ship v. IBP, Inc.*, 393 F.3d 828, 831 (8th Cir. 2005) (party seeking removal must show only that the claims originally asserted in the Complaint "could, that is might, legally satisfy the amount in controversy requirement.").

- 6. Plaintiff is a resident of Missouri. *See* Exhibit A, Plaintiff's Petition, ¶ 1.
- 7. The Cheesecake Factory was formed in California, its headquarters are located in California, and its primary officers are located in California. *See* Exhibit B, California Secretary of State Electronic Filing.
- 8. The Cheesecake Factory has been found to be a resident of California by the United States District Court for the Northern District of New York. *See Oakes v. Cheesecake Factory Restaurants, Inc.*, 3:20-CV-269 (FJS/ML), 2020 WL 2850149 \*1, n,1 (N.D.N.Y, June 2, 2020).
- 9. Complete diversity exists between Plaintiff, a Missouri resident, and The Cheesecake Factory, a California resident.
- 10. This Notice of Removal is timely filed because it is filed within thirty days of service of the Complaint.

11. A copy of this Notice of Removal is being served upon Plaintiffs and filed concurrently with the Circuit Court of Jackson County, Missouri as required by 28. U.S.C. § 1446(d).

WHEREFORE, for the reasons set forth above, The Cheesecake Factory Restaurants, Inc. hereby gives notice that the State Court Action in the Circuit Court of Jackson County, Missouri, is removed to the United States District Court for the Western District of Missouri and the action will proceed in federal court as properly removed thereto.

Respectfully submitted,

MCANANY, VAN CLEAVE & PHILLIPS, P.A.

/s/ Spencer A. Low

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on October 28, 2020, a true and correct copy of the foregoing was served via the Court's CM/ECF system which generated electronic notice of same to the following counsel of record:

Dennis J. Cassidy  
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**ATTORNEYS FOR PLAINTIFF**

/s/ Spencer A. Low

Attorneys for Defendants